

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**AUG 11 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

DOROTHY L. MILLER,

Plaintiff - Appellant,

v.

CITY OF PHOENIX, a municipal  
corporation,

Defendant - Appellee.

No. 04-16778

D.C. No. CV-02-01447-SRB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Susan R. Bolton, District Judge, Presiding

Submitted July 27, 2006<sup>\*\*</sup>  
San Francisco, California

Before: MERRITT<sup>\*\*\*</sup>, KLEINFELD, and PAEZ, Circuit Judges.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable Gilbert S. Merritt, Senior Judge, United States Court Appeals for the Sixth Circuit, sitting by designation.

Plaintiff Dorothy L. Miller (“Miller”) appeals orders of the District Court of Arizona imposing monetary sanctions on her counsel and dismissing her case pursuant to Fed. R. Civ. P. 41(b) for counsel’s failure to pay the sanctions. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 1294. We vacate the district court’s orders and remand.

Although district courts have inherent powers to impose sanctions on attorneys, including monetary fines and attorney’s fees, *Zambrano v. City of Tustin*, 885 F.2d 1473, 1478 (9th Cir. 1989), the power to assess attorney’s fees against counsel arises “in narrowly defined circumstances,” *Roadway Express v. Piper*, 447 U.S. 752, 765 (1980). Our law requires that, in order to impose the sanction of attorney’s fees for “willful disobedience of a court order” or “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons,” *Chambers v. Nasco, Inc.*, 501 U.S. 32, 45-46 (1991) (internal quotation marks omitted), a court must “specifically find[] bad faith or conduct tantamount to bad faith,” *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001); *see also Roadway Express*, 447 U.S. at 767 (vacating and remanding the sanction of attorney’s fees because “the trial court did not make a specific finding as to whether counsel’s conduct in this case constituted or was tantamount to bad faith, a finding that would have to precede any sanction under the court’s inherent powers”). Conduct

is “tantamount to bad faith” if there is “recklessness . . . *combined with* an additional factor such as frivolousness, harassment, or an improper purpose.” *Fink*, 239 F.3d at 994 (emphasis added); *see also In re Dyer*, 322 F.3d 1178, 1197 (9th Cir. 2003).

In imposing attorney’s fees against Miller’s counsel, the district court did not make an explicit finding of bad faith, willful disobedience, or conduct tantamount to bad faith. We therefore vacate the district court’s orders and remand so that the district court may make such a finding, if supported by the record. If the district court makes a finding of bad faith, it may then reinstate the monetary sanctions and the order of dismissal. Because it is unclear whether the attorney’s fees were imposed appropriately, we need not address the Rule 41(b) dismissal.

**VACATED and REMANDED.**